

**Applicant:** Flecknoe-Brown et al.  
**Application No.:** 10/580,524

**REMARKS**

After the foregoing Amendment, claims 22, 24, and 26-39, and 41-42 are pending in this application. Claims 28-39 are withdrawn. This Reply amends claims 22 and 42, cancels claim 40. This Reply also amends the specification at the paragraph beginning at page 3, line 17. These amendments introduce no new matter into the application.

**Claim Rejections - 35 USC § 112**

The Final Action rejected claims 22, 24, 26, 27, and 40-42 under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement. Obviating amendments are made.

Applicant respectfully requests withdrawal of the claim rejections under 35 USC § 112.

**Claim Rejections - 35 USC § 103**

The Action rejects claims 22 and 40-42 under 35 USC § 103 as obvious over White (DE 2357970); claims 24 and 26, as obvious over White in view of Diaz (US 2004/0226451); and claim 27 as obvious over White in view of Diaz and French 2736923. Applicants respectfully traverse these rejections, and submit the attached

Second Declaration of Anthony Earl Flecknoe-Brown Pursuant to 37 C.F.R. § 1.132 (“Second Declaration”), in support of the patentability of the pending claims.

Independent claim 22 is directed to “[a] method of maturing wine in bulk after fermentation.” Likewise, independent claim 41 is directed to “[a] method of maturing a beverage other than table wine in bulk after fermentation.” Both claims further recite a step of “storing the wine in a closed container...after fermentation.”

The April 8, 2009 Office Action (“Action”) cites White as teaching “a process wherein wine is matured in a closed container made of plastic (e.g. polyethylene) wherein oxygen is allowed to permeate the walls of said container to facilitate maturing of wine.” Page 3. As discussed in the Reply filed June 5, 2009, White’s process in which wine is “matured” is not the same as conventional maturation as understood by those of ordinary skill in the art, and actually refers to fermentation. In response to these arguments, the June 17, 2009 Advisory Action (“Advisory Action”) stated “this limitation does not appear to be recited in the instant claims.”

Although Applicants believe that the claimed “method of maturing wine” in and of itself would be understood by a person of ordinary skill in the art to be distinct from that taught by White (*see* Second Declaration at ¶ 11-14), the claims have been amended to further specify that the method takes place “after fermentation,” and that the wine is stored in a closed container “after fermentation.” This amendment is fully supported by the specification, as a person of ordinary skill in the art would recognize that the originally filed specification

pertains to processes taking place after fermentation. Second Declaration at ¶ 24. Nothing in White's disclosure relates to any process that takes place after fermentation, and nothing suggests modifying the disclosed method to meet this limitation.

The claims also recite that the wine is stored in a container for a period "ranging from four to thirty-six months." White fails to teach this limitation as well, and actually teaches away from storing wine for such extended time periods. White only ever states that the disclosed fermentation process can take place in "5 to 21 days." This teaches away from Applicant's method, which involves storing the wine for a minimum of four months, and would deter a person of ordinary skill in the art from looking to White to develop such a method. *See* Second Declaration at ¶ 15.

White further fails to teach a container having polyethylene walls that "are sufficiently stiff to render the container self supporting." White discloses a container having film or membrane walls. As explained in the Second Declaration, this is because at the time of White's disclosure it was believed that this was the only way to produce a container permitting adequate oxygen transfer for fermentation to take place. *See* Second Declaration at ¶ 26. As such, White fails to even contemplate producing a "self supporting" container in which the walls have a "combination of thickness, surface area, and volume to permit oxygen to permeate the walls directly from the atmosphere into the wine in contact with the walls at a

rate of less than 80 milligrams of oxygen per litre of wine per year,” and nothing in White’s disclosure or the state of the art suggests producing, or even that it would be possible to produce, such a container. As explained in the Second Declaration, it took a substantial amount of effort and ingenuity on the part of the inventors to develop such a device. *See* Second Declaration at ¶ 26-27

Claim 22 further recites that the container walls “comprise a combination of thickness, surface area, and volume...[that] provides the container with an oxygen permeation rate that results in wine maturation equivalent to oak cask maturation.” Similarly, claim 42 recites that the walls comprise “a combination of area and thickness...[that] provides the container with an oxygen permeation rate that results in maturation equivalent to oak cask maturation.” White teaches fermentation “carried out in a vessel made of a film of membrane of material of the plastics class for example polyethylene.” Australian Specification at page 3, lines 1-3. It would not have been obvious, absent the application of impermissible hindsight, to modify White’s plastic vessel to impart a permeation rate “that results in wine maturation equivalent to oak cask maturation.” In fact, White teaches just the opposite, because White’s disclosure is directed to speeding up fermentation, requiring the vessel to be formed of “a film which is thick enough to permit rapid oxygen diffusion.” Such a level of permeability would be far too high to achieve the slow maturation comparable with that of oak barrels, and a person of ordinary skill in the art would be deterred from looking to White’s disclosure to achieve such a

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result. See Second Declaration at ¶ 16.

White not only fails to teach various limitations of Applicant's claims, but as set forth above and in the Second Declaration, actually teaches away from these features. White therefore cannot be properly cited as a reference in rejecting the claims under 35 U.S.C. § 103.

The secondary references fail to remedy White's deficiencies.

Applicant respectfully requests withdrawal of the claim rejections under 35 U.S.C. § 103(a) claim rejections.

### **Conclusion**

If the Examiner believes that any additional matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

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In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Flecknoe-Brown et al.

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Enclosure